



RETAILERS ASSOCIATION
of MASSACHUSETTS

The Voice of Retailing

September 11, 2014

ATTN: Anti-Trust Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108

Re: Comments on the Proposed Final Judgment in Massachusetts v. Partners Healthcare System, Inc., South Shore Health and Educational Corp., and Hallmark Health Corp., Civ. No. 14-2033 (BLS).

Dear Attorney General Coakley:

The National Federation of Independent Business (NFIB) is a non-profit, non-partisan advocacy organization for our state's and our nation's small businesses. In Massachusetts, NFIB represents thousands of small and independent business owners involved in all types of industry, including manufacturing, retail, wholesale, service, and agriculture. The average NFIB member has five employees and annual gross revenues of about \$450,000. NFIB represents the small Main Street business owners from across our state.

The Retailers Association of Massachusetts (RAM), established in 1918, is a statewide trade association of over 3,500 member companies. Our membership ranges from independent, "mom and pop" owned stores to larger, national chains operating in the general retail, restaurant and service sectors of the retail industry. The industry's contributions to the Commonwealth include over \$200 billion in annual sales; over \$5.1 billion in annual sales taxes collected; 17% of all Massachusetts jobs; and operations in over 71,000 locations across the state.

On behalf of more than 100,000 small and independent business owners and of more than 1.5 million workers at small businesses in the Commonwealth, we urge you to reconsider the proposed settlement because the merger will not result in lower health care costs or lower health insurance premiums for small businesses and their workers.

Theoretically, the further expansion of the already extraordinary market power of Partners Healthcare System as envisioned in the settlement is not likely to reduce costs for small

businesses. Nor are the proposed caps to end run the laws of economics likely to be effective. The proposed merger will, rather than assist consumers by restoring competition, increase concentration and lead to even higher prices. Indeed the Health Policy Commission's July 2014 Cost and Market Impact Review of Partners' acquisitions of South Shore Hospital and Harbor Medical Associates concluded that "those transactions would increase health care spending, likely reduce market competition, and result in increased premiums for employers and consumers." Moreover, the competitive problems with hospital acquisitions by higher-priced hospitals in the Boston area were previously recognized. As far back as 2010, the Attorney General's Examination of Health Care Cost Trends and Cost Drivers stated that "providers continue to lose volume to higher-priced hospitals, making it increasingly difficult for them to remain competitive, or sometimes even viable.....and we would continue to see an increase in overall cost due to volume shifting to more expensive sites."

More recently, the Center for Health Information and Analysis (CHIA) concluded that the largest increase in costs emanated from the state's largest health care provider in 2013 and the largest increase in health insurance premiums came from Massachusetts' largest insurer. While average health insurance premium increases were moderate according to its report, CHIA noted that an average means some consumers experienced larger increases and that those larger increased premiums were concentrated among individuals and some small businesses. The Health Policy Commission, statutorily empowered to review these types of proposed mergers, also issued its final report warning that the merger could cause increases in health care costs by \$15 million to \$23 million in areas north of Boston.

Small business' concerns about costs are more than theoretical. Small business owners and workers in the Commonwealth have experienced extraordinary cost increases for health care and health insurance prior to, as well as since, implementation of health care reform in Massachusetts beginning in 2006. And, as in government, increased health care costs in small businesses crowd out spending on other important items. In business, those crowded out priorities may include salary increases and improved pension and retirement benefits for incumbent workers, new jobs for prospective workers, and investment in new equipment and buildings for business expansion. The economic impacts of these "crowd outs" have manifested themselves in Massachusetts' slow growth economy over the past decade or more and cry out for "careful scrutiny" by policymakers.

The Attorney General's Office has documented some of the specific health care cost increases imposed on small businesses, which included the fact that the cost increases were not justified by increased quality of care or better outcomes. For example in April 2013, the Attorney General's Third Examination of Health Care Cost Trends and Cost Drivers Pursuant to G.L. C. 6D, Section 8 cited the "market dysfunctions that have resulted in escalating health care costs that are not explained by the value of services provided" identified in the 2010 and 2011 reports from the Office of the Attorney General. The 2013 report went on to urge careful scrutiny of proposed provider mergers by regulators "to assess whether increases in price garnered from greater market leverage of larger providers exceed the potential increased efficiency that may result from planned care coordination in the consolidated enterprise." Given the leverage of Partners Healthcare System combined with the well-documented expected increase in costs to small

businesses, the likely price hikes will easily exceed any efficiency that would result from the mergers.

Recognizing that the original health care reform law omitted significant cost control provisions, the legislature enacted Chapter 224 in 2012. Chapter 224 included language empowering the Health Policy Commission to review proposed hospital mergers. The Office of the Attorney General recommended that the Health Policy Commission conduct the review to determine whether any new affiliation's claims that a merger will save money stand up to scrutiny. But this court procedure circumvents that process, as the statutory study by the HPC concluded, as noted above, that the proposed mergers would in fact lead to substantially higher prices for businesses and individuals in certain areas of the state, particularly north of Boston. The proposed caps are likely to be ineffective in holding back the natural course of economics and the actions of a dominant hospital group.

As representatives of smaller private businesses, we are skeptical of the ability of the various players in the health care industry to control costs. The insurers, the providers, the professionals employed by the providers, even the union workers at the providers, all have a vested economic interest in increasing costs because these costs represent revenues to the industry. To small business owners and workers in these small companies, increased medical care costs manifest themselves in the form of higher insurance premiums and higher direct billings from providers. We must conclude that mergers that increase the market power of one provider in an already dysfunctional market are exceedingly unlikely to result in lower costs for small businesses.

As a result, we urge the Attorney General to reconsider the current settlement and move to block the proposed mergers.

Very truly yours,



William B. Vernon
National Federation of Independent Business



Jon B. Hurst
Retailers Association of Massachusetts